

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 JUSE-00 L-03 H-02 PM-04 NSC-05 SP-02

SS-15 CIAE-00 INR-07 PA-01 USIA-06 PRS-01 CPR-01 /057 W

----- 080200

R 261207Z AUG 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 0338

INFO CINCPAC HONOLULU HI

DIRNSA WASHDC

DAJA-IA WASHDC

SECDEF WASHDC

COMUSMACTHAI BANGKOK TH

AMCONSUL UDORN

7TH RRFS UDORN TH

DOD/SRT BANGKOK TH

C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 17928

DEPARTMENT PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

E.O. 11652: GDS

TAGS: MARR, MILI, TH

SUBJECT: RAMASUN GATE INCIDENT REVISITED

REF: (A) BANGKOK 6833; (B) STATE 091119; (C) BANGKOK 7048

(D) BANGKOK 12441; (E) 7TH RRFS, DTG 200335Z AUG 75 (NOTAL)

SUMMARY: THE RAMASUN GATE INCIDENT HAS BEEN
RESURFACED BY LUECHAI'S INITIATION OF SUIT AGAINST
THE STATION COMMANDER FOR SEVERANCE PAY, EVEN
THOUGH HE HAD AGREED NOT TO TAKE SUCH ACTION WHEN
HE SETTLED THE CRIMINAL CASES RAISED BY THIS
INCIDENT. WE ARE TRYING TO HAVE THE CASE HANDLED
THROUGH DIPLOMATIC CHANNELS TO AVOID RELYING ON
THE COMMANDER'S DIPLOMATIC IMMUNITY AS A DEFENSE
AND POSSIBLY RENEWING THE PUBLIC CLAMOR THAT
ISSUE PREVIOUSLY CAUSED. REQUEST CONCURRENCE TO
THAT APPROACH. END SUMMARY

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1. MR. LUECHAI JITPAKDEE INITIATED SUIT AGAINST COLONEL J.D. HOWARD, AS COMMANDING OFFICER, RAMASUN STATION, AND MR. (CW2) RONALD J. GIVEN (THE FORMER INSTALLATION CLUB OFFICER) IN THE PROVINCIAL COURT, MUANG DISTRICT, UDORN-THANI PROVINCE, THAILAND, FOR SEVERANCE PAY IN THE AMOUNT OF 53,834.33 BAHT (APPROX. \$2,069). MR. GIVEN, WHO HAD ALREADY BEEN REASSIGNED, WAS THEREAFTER DROPPED AS A DEFENDANT. PERSONAL SERVICE OF PROCESS AT RAMASUN STATION WAS ATTEMPTED ON OR ABOUT 10 AUGUST 1975, BUT FAILED BECAUSE OF THE ABSENCE OF ANYONE AUTHORIZED TO ACCEPT THE SAME. SUBSTITUTED SERVICE, IN ACCORDANCE WITH THE CIVIL PROCEDURE CODE OF THAILAND, WAS ACCOMPLISHED ON 19 AUGUST 1975 BY A COURT CLERK POSTING THE SUMMONS AT THE MAIN GATE. THE DEFENDANT HAS 23 DAYS, ON OR BEFORE 11 SEPTEMBER 1975, TO RESPOND.

2. THIS SUIT IS BASED ON THE TERMINATION OF MR. LUECHAI'S EMPLOYMENT AT THE RAMASUN STATION ENLISTED CLUB. THE THEN CLUB OFFICER, CW2 GIVEN, INITIATED THAT ACTION FOR CAUSE IN FEBRUARY 1975. BEFORE THAT PERSONNEL ACTION WAS FINALIZED, LUECHAI WAS FORCIBLY APPREHENDED AT THE STATION'S MAIN GATE BY FOUR MILITARY POLICEMEN AND THEN DETAINED. THIS LED TO THE FOUR BEING SEPARATELY CHARGED BY BOTH THE POLICE AND LUECHAI FOR THEIR ACTIONS. THEN IT APPEARED THAT THE FOUR WOULD AVOID THE CRIMINAL ACTIONS ON THE BASIS OF THEIR DIPLOMATIC IMMUNITY, A PUBLIC CAMPAIGN WAS MOUNTED AGAINST WHAT WAS PERCEIVED AS AN AFFRONT AGAINST THAI SOVEREIGNTY. TO MINIMIZE THE ATTENTION BEING FOCUSED ON RAMASUN STATION AND ITS MISSION, AND TO PRESERVE THE SHAKY DIPLOMATIC IMMUNITY STATUS OF PERSONNEL AT RAMASUN AND OTHER INTELLIGENCE INSTALLATIONS, IT WAS DECIDED TO COMPROMISE LUECHAI'S CRIMINAL ACTION.

3. THE COMPROMISE AGREEMENT WAS REACHED ON 18 APRIL (REF A). IT STIPULATED THAT IN CONSIDERATION OF THE PAYMENT OF 150,000 BAHT (APPROXIMATELY \$7,500), THE WITHDRAWAL OF ALLEGATIONS OF MISCONDUCT, AND THE

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CONVERSION OF HIS TERMINATION FOR CAUSE TO A RIF, LUECHAI AGREED TO PETITION THE COURT TO HAVE HIS CASE DROPPED, ADVISE THE POLICE OF HIS SATISFACTION AND REQUEST TERMINATION OF THEIR ACTION, REFRAIN FROM TAKING ANY LEGAL ACTION AGAINST USG PERSONNEL ON ACCOUNT OF THE MATTER, AND REFRAIN FROM INSTIGATING PUBLIC DEMONSTRATIONS. IN NEGOTIATING THE SETTLEMENT, IT WAS VERBALLY AGREED THAT THE MONETARY PAYMENT INCLUDED

THE SEVERANCE PAY TO WHICH LUECHAI WAS ENTITLED AS HE WAS NO LONGER BEING TERMINATED FOR CAUSE. THE WRITTEN AGREEMENT, HOWEVER, IS NOT SPECIFIC IN THAT REGARD.

4. THE SETTLEMENT AGREEMENT WAS IMPLEMENTED ON 22 APRIL (REF C). SOME DELAY WAS ENCOUNTERED IN HAVING THE POLICE CASE DROPPED, BUT THAT WAS FINALLY ACCOMPLISHED VIA THE DIPLOMATIC IMMUNITY ROUTE, WHEN THE MINISTRY OF FOREIGN AFFAIRS (MFA), DECIDING THAT PUBLIC INTEREST HAD WANED, VERIFIED THE IMMUNITY OF THE FOUR MILITARY POLICEMEN. (REF D).

5. LUECHAI'S SUIT IS IN CONTRAVENTION OF THE TERMS OF HIS SETTLEMENT AGREEMENT AND CAN BE DEFENDED ACCORDINGLY. ADDITIONALLY, IT MAY BE DEFENDED ON THE BASIS THAT LUECHAI HAD ALREADY RECEIVED HIS SEVERANCE PAY. HOWEVER, THERE CAN BE NO GUARANTEE THAT THIS WOULD SUCCEED. CONSEQUENTLY, IT WOULD BE PREFERABLE TO DISPOSE OF THE CASE PRIOR TO REACHING A DEFENSE ON THE MERITS. THIS CAN BE ACCOMPLISHED IN AT LEAST TWO WAYS:

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C O N F I D E N T I A L SECTION 2 OF 2 BANGKOK 17928

DEPARTMENT PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

A. THE NAMED DEFENDANT, COL. J.D. HOWARD, AS THE COMMANDER OF THE 7TH RRFS, HAS DIPLOMATIC IMMUNITY PURSUANT TO THE TERMS OF THE RADIO RESEARCH AGREEMENTS WITH THE RTG. HIS STATUS COULD BE ASSERTED, AND, CONSIDERING OUR MOST RECENT EXPERIENCES, WOULD PROBABLY BE VERIFIED BY MFA.

B. SINCE THE ACTION IS AGAINST THE USG, THE RAMASUN STATION JUDGE ADVOCATE REQUESTED THE COURT TO EFFECT SERVICE UPON THE EMBASSY THROUGH DIPLOMATIC CHANNELS. THE COURT REFUSED TO DO SO. THE RTG MINISTRY OF JUSTICE HAS INFORMALLY AGREED THAT SERVICE SHOULD BE MADE IN THAT MANNER, AND IS SEEKING THE CONCURRENCE OF THE MINISTRY OF FOREIGN AFFAIRS. IF MFA AGREES, THE MINISTRY OF JUSTICE WILL DIRECT THE COURT TO PROCEED IN THAT MANNER. WHEN THE CHIEF PROVINCE JUDGE WAS ADVISED OF THE MINISTRY OF CONFIDENTIAL

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JUSTICE'S THOUGHTS IN THE MATTER, HE INDICATED THAT IT WAS HIS INDEPENDENT DECISION TO MAKE. HOW THIS JURISDICTIONAL DISPUTE WILL END CANNOT AS YET BE PREDICTED. NEVERTHELESS, IF SERVICE IS MADE IN THIS MANNER, THE DEFENSE OF SOVEREIGN IMMUNITY CAN BE RAISED DIPLOMATICALLY.

6. WHILE WE CANNOT PREDICT WHETHER THE ASSERTION OF COL. HOWARD'S DIPLOMATIC IMMUNITY WOULD INCITE THE SAME TYPE EXPLOSIVE REACTION EXPERIENCED WHEN THAT DEFENSE WAS SURFACED REGARDING THE FOUR MILITARY POLICEMEN, WE WOULD PREFER NOT RISKING THE POSSIBILITY AT THIS TIME. INSTEAD, WE FAVOR RECOURSE TO THE DEFENSE OF SOVEREIGN IMMUNITY, PREFERABLY AT THE DIPLOMATIC LEVEL. PROCEEDING IN THAT FASHION WOULD PERMIT THE PRIVATE DISCUSSION OF ALL THE DEFENSES TO THE CASE, AND, HOPEFULLY, A MUTUAL AGREEMENT ON A SOLUTION THAT IS BOTH POLITICALLY FEASIBLE AND LEGALLY EFFECTIVE. YOUR CONCURRENCE TO THIS APPROACH IS REQUESTED. WHITEHOUSE

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